

ST 03-9

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS ,**

No: 02 ST 0000

Sales Tax Exemption

v.

**ABC FOUNDATION,
TAXPAYER**

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. John Doe, on behalf of ABC Foundation, Mr. George Foster, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS: On May 31, 2001, ABC Foundation (hereinafter “ABC” or “applicant”) wrote to the Illinois Department of Revenue (hereinafter the “Department”) to request that the Department issue it an exemption identification number so that it could purchase tangible personal property at retail free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On April 12, 2002, the Department denied ABC’s application. On April 22, 2002, ABC requested a review of the denial and on June 10, 2002, the Department again concluded that ABC did not meet the requirements of a tax-exempt

organization. ABC protested the Department's decision and requested a hearing, which was held on April 24, 2003, with testimony from Jane Doe, Vice President and Director of ABC.

The sole issue to be determined at the hearing was whether ABC qualified for an exemption identification number as "a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes." 35 ILCS 105/3-5(4). Following a careful review of the evidence and testimony presented at the hearing, I recommend that the Department's denial be affirmed.

FINDINGS OF FACT:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department's denial of exemption dated April 12, 2002, and denial after a second review, dated June 10, 2002. Tr. pp. 7-8; Dept. Ex. No. 1.
2. On June 5, 2000, ABC filed Articles of Incorporation under the "General Not For Profit Corporation Act," stating that its corporate purpose was "independent living; administration and operation of an organization on a cooperative basis producing or furnishing goods, services, or facilities primarily for the benefit of its members who are consumers of those goods, services or facilities." Tr. pp. 11-12; Applicant's Ex. No. 1.
3. On October 28, 2002, ABC filed Articles of Amendment deleting the corporate purpose in the Articles of Incorporation and stating that its purposes "are exclusively religious, charitable, scientific, literary and educational within

the meaning of Section 501(c)(3) of the Internal Revenue Code.” Tr. pp. 12-13; Applicant’s Ex. Nos. 1 and 1(A).

4. ABC is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 35-37; Applicant’s Ex. No. 2.

5. ABC tries to find sleeping rooms or apartments for the homeless in Anywhere County. Some of the apartments are owned by ABC. The homeless include women, people in drug rehabilitation, senior citizens and parolees. Tr. pp. 14, 20-21.

6. Jane Doe and Ron Doe purchased and rehabbed a brick duplex located at Anywhere Court in Anywhere. On June 17, 2002, Jane Doe and Ron Doe quitclaimed this property to ABC. The first floor has been occupied by a woman who lost custody of her five children in a divorce. She went to college, got her children back and moved into her own home. Three teenagers then lived in the first floor for a year, found jobs, went to school and have now moved out. Tr. pp. 15-19; Applicant’s Ex. No. 5.

7. Jane Doe and Ron Doe reside at Anywhere Court on the second floor which also serves as Jane Doe’s office. Jane Doe’s residency in the building allows her to monitor anxiety and panic problems with residents, unwanted visitors and provide security. Ron Doe serves as a handyman for the ABC buildings. Tr. pp. 30-31, 33.

8. Jane Doe and Ron Doe also purchased and rehabbed Anywhere Court. On June 17, 2002, Jane Doe and Ron Doe quitclaimed this property to ABC. The building is used as a single-family unit, usually for homeless senior citizens.

Seniors need a mailing address in order to collect entitlement checks. When seniors reside here, Jane Doe helps them attain benefits. Seniors stay in this building until they can get into apartments with the Anywhere Housing Authority. Tr. pp. 22-23, 51, 54; Applicant's Ex. No. 3.

9. There are currently no residents living at Anywhere Court. In the warmer months, seniors usually stay at overnight shelters which they must vacate in the morning. Seniors then go on to other area charities for meals. Anywhere Court is mainly used in the colder months, when seniors do not want to be on the streets. Tr. pp. 53-54.

10. Jane Doe and Ron Doe also purchased and rehabbed Anywhere Court, and now allow young women to reside there. On June 17, 2002, Jane Doe and Ron Doe quitclaimed this property to ABC. Tr. pp. 22-23; Applicant's Ex. No. 4.

11. When residents are admitted to ABC's buildings, Jane Doe evaluates what their needs and goals are. If the residents find employment, Jane Doe teaches them how to pay their bills, and live on the salary earned. Two or three years after intake, Jane Doe begins to collect rent from the tenants. Having a history of paying bills on time may help the residents qualify for a first time buying program for homes. Tr. pp. 24-28.

12. No private donors have contributed money to ABC. Tr. pp. 32-33.

CONCLUSIONS OF LAW:

An examination of the record establishes that ABC has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from sales tax. Accordingly, under the reasoning given below, the

determination by the Department denying the applicant a sales tax exemption number should be affirmed. In support thereof, I make the following conclusions.

ABC seeks to qualify for an exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable...purposes[.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). In Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149 (1968), the Illinois Supreme Court outlined several factors to be considered in assessing whether an organization is actually an institution of public charity: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1995).

While it is apparent that ABC responds to the needs of the community, the evidence and testimony presented at the hearing were not sufficient for me to conclude that ABC is a charitable institution in accordance with the guidelines set forth in Methodist Old People’s Home. Two of these guidelines are that the organization’s funds be derived mainly from public and private charity and that the funds be held in trust for the purposes expressed in the charter and, secondly, that the organization not provide

gain or profit in a private sense to any person connected with it. Generally, in order to assess whether an organization meets these two guidelines, financial statements are required. No financial statements were admitted for ABC. ABC's source of funding appears to be the three buildings donated by Jane Doe and Ron Doe to the organization and the rent collected from residents of these buildings.

Jane Doe's testimony with regard to the three buildings was contradictory. Jane Doe testified that she and Ron Doe purchased Anywhere Court for \$3,000. Tr. p. 16. Later, Jane Doe was asked what was the "source of funds to purchase these homes...?" She responded that an attorney in Anywhere lent her "\$6,000, and a loan to get it started." Tr. pp. 34-35. With regard to the properties located at Anywhere Court, Jane Doe testified that she and Ron Doe "got 921 finished, and then I got a mortgage on that to get the other two, because they were so low." Tr. p. 35.

There was testimony that Anywhere Court was purchased in 1995. Tr. p. 17. There was no testimony as to when the other two buildings were purchased. No deeds were presented for Jane Doe's and Ron Doe's purchase of any of the properties, and accordingly, I am unable to determine what interest Jane Doe and Ron Doe quitclaimed to ABC on June 17, 2002. There was no testimony as to the original purchase price of Anywhere Court, the value of any of the three buildings after they were rehabbed or the value of any of the three buildings when they were quitclaimed to ABC. Without financial statements and without detailed information on the buildings, I am unable to conclude that ABC's funding is derived mainly from public and private charity.

Additionally, Jane Doe testified that after tenants have stayed in the buildings two or three years, she begins collecting money from them for "utilities and maybe some kind of housing cost." Tr. p. 27. There was no testimony as to how much rent was

collected or from how many tenants. There was, in fact, no testimony that any individual tenant had resided in the buildings for two or three years, which, according to Jane Doe is when she begins to collect rent. It must also be noted that the buildings were quitclaimed to ABC in June of 2002, but were apparently owned by Jane Doe and Ron Doe prior to that period. There was no testimony as to whether there were paying tenants in the buildings between their purchase and when the buildings were quitclaimed to ABC.

ABC has had no private donors. “We’ve had vehicles and stuff donated to us, but nothing as far as cash in hand.” Tr. p. 32. ABC’s funding then is composed of the buildings quitclaimed to the organization and the rent collected. There was no testimony as to whether the rent collected from tenants was held in trust for charitable purposes, or how the rent collected was used by ABC. Additionally, Jane Doe testified that she and Ron Doe reside in the second floor of Anywhere Court. Tr. p. 29. There was no testimony that Jane Doe and Ron Doe paid rent to ABC, or whether the rent collected from other tenants covered the living expenses of Jane Doe and Ron Doe. Without evidence on the dollar amount and use of the rents collected from tenants, I am unable to conclude that the funds received are used to further charitable purposes or that the occupancy of the buildings does not provide a gain or profit, in a private sense, to Jane Doe and Ron Doe.

Two other factors to be considered in assessing whether ABC is a charitable organization is whether the charity is dispensed to all who need and apply for it and whether ABC places obstacles in the way of those who would avail themselves of the charitable benefits it dispenses. The evidence and testimony presented at the hearing were not sufficient for me to conclude that ABC has met these guidelines. Jane Doe was

asked how she decides “whether someone is eligible or not to participate with you?” She responded:

Basically, we go back and find out where they were from originally, where they were prior, where they lived prior, were they sleeping in cars, were they sleeping in other people’s homes, what happened, you know. We try to go through all those other methods, but as have to do it in such a time urgency period, especially in the winter months, that we have to make rational, fast decisions, you know.
Tr. pp. 23-24.

Jane Doe was asked “how many families have you had through these homes?”

A. Oh, my gosh, all the way through from the time we started to now, probably 25, 26 families.
Q. Individuals, or it might be an actual –
A. Right.
Q. Couples or families?
A. Those are documented cases. We have undocumented cases. We have undocumented cases where we’re out in the street also.
Tr. p. 28.

No operating manuals or bylaws were admitted into evidence and I am unable to determine what criteria ABC uses for assessing whether a person should be admitted into the residences. It is unclear what effect finding out where residents “were prior, where they lived prior” bears on whether they should be admitted to residency in ABC’s buildings. There was no testimony as to how many people were refused residency and the reasons for the refusal. There was no testimony as to whether any residents admitted to the buildings were later asked to leave. Jane Doe testified that ABC has had no “failed cases.” No documentary evidence was provided to support this and there was no testimony as to what guidelines she used to assess whether a “case” was a success or a failure.

It is unclear from Jane Doe’s testimony whether 25 or 26 families, individuals or couples have resided in the buildings. If these are “documented cases,” no

documentation was presented. Evidence on current tenants in the buildings was also contradictory. With regard to Anywhere Court, Jane Doe initially testified that “[A]nd now we have another young group that is in there.” Tr. p. 20. Later in cross-examination, Jane Doe stated that ABC was currently providing services for four people: “Anywhere 1 has one [resident] downstairs. Anywhere 2 has the rest.” When asked to describe the “person” at Anywhere, she responded that it was a “single family,” a “mother and child.” Tr. p. 46. It is unclear then whether the current resident(s) at Anywhere Court is/are “another young group,” “one” resident, a “single family,” or a “mother and child.”

Jane Doe testified that there are no residents currently living at Anywhere Court because it is mainly used by seniors in the winter months. Tr. pp. 53-54. Later Jane Doe stated that “[W]e get more referrals than what we can help. It would be nice if we had more homes to repair.” Tr. p. 54. If ABC gets more referrals than they can help, I must question why the property at Anywhere Court, now empty and waiting for seniors, is not used for the other referrals. The testimony does not allow me to conclude that Open Heath provides charity to all who need and apply for it or that ABC does not place obstacles in the way of those needing its services.

ABC may be reducing the burden on government by caring for and housing residents, who might otherwise be relying on the government for their housing. Jane Doe testified that the ABC Foundation has six members, “but nobody has gotten any salaries.” Tr. pp. 43-44. She also testified that nobody has received any dividends or other monies from the Foundation. Tr. p. 44. However, in balancing these characteristics favorable to assessing ABC as a charitable organization against the characteristics discussed above, I must conclude that ABC has failed to prove that it is a charitable organization.

The applicant bears the burden of proving “by clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2d Dist.1991). Moreover, it is well established that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemptions “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989). The evidence and testimony presented at the hearing indicate that ABC does perform some charitable acts. However, there was insufficient testimony and evidence for me to conclude that ABC is a charitable institution, in accordance with the guidelines of Methodist Old Peoples Home.

For the above stated reasons, I recommend that the Department’s determination denying the applicant a sales tax identification number be affirmed

Kenneth J. Galvin

June 10, 2003